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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,835	08/10/2001	Yoshitaka Mishima	SHC0136	7055

7590

07/31/2003

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/31/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/927,835

Applicant(s)

MISHIMA ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3-4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference character "18" is not mentioned in the description. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the symbols used throughout the disclosure (i.e., page 4, line 23 and page 5, line 4) should be replaced with the corresponding descriptive text.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3761

Claims 1 – 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite a stretch stress for each pair of wings that is exerted in a different region of the undergarment, however, a way of determining this stretch stress has not been described in such a way that one of ordinary skill in the art would be able to make and/or use the invention. How is the stretch stress determined? Is the stretch stress a direct result of transverse dimension of the wings or is the stretch stress determined by some other method? Clarification and/or correction are required.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of multiple pronouns in claim 2 renders the claim indefinite. It is unclear what "their" is being used to refer to. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3761

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 – 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Heki (US 6,200,299).

With respect to claim 1, Heki discloses a disposable undergarment comprising side edge portions, end portions, a front waist region, a rear waist region, and a crotch region (figure 1) with a pair of elastically stretchable first wings extending from the side edge portions of at least one of the front and rear waist regions (6), said first wings having a first proximal side edge portion and a first free side edge portion being provided with means to connect the front and rear waist regions to each other (7), said first proximal side edge portions being contiguous to the transversely opposite side edge portions of the crotch region (figure 1) and a stretch stress generated in the first wings as the front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction as well as in a thigh-surrounding direction (col. 9, lines 38 – 44) and a pair of elastically stretchable second wings extending outward from the transversely opposite side edge portion of the waist region

Art Unit: 3761

in the transverse direction (20), said second wings being placed upon said first wings, said second wings having second proximal side edge portion lying on said transversely opposite side edge portions of the waist region and second free side edge portions spaced outward from said first proximal side edge portions in said transverse direction and fixed to said first free side edge portions (col. 7, lines 57 – 62), said second proximal side edge portions are non-contiguous to the transversely opposite side edge portions of the crotch region, and a stretch stress generated in the second wings as said front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction as set forth in col. 15, lines 45 – 57.

With reference to claim 2, Heki discloses an undergarment wherein the a transverse dimension of the first wings (6) is greater than a transverse dimension of the second wings (20) and values of the stretch stress generated in the first wing is less than values of a stretch stress being generated in the second wing as set forth in col. 8, lines 41 – 48.


The examiner contends that the values of stretch stress of the first wing are less than values of stretch stress in the second wing because the second wing is easily stretchable and would have a greater stretch stress value than the first wing which is not as easily stretched. A greater amount of manipulation would result from a small amount of tensile force applied to the second wing. While, if the same amount of tensile force were applied to the first wing, a lesser amount of manipulation would result because of the type of materials that form the first and second wings as set forth in col. 9, lines 20 – 30.


Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
July 14, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700